

REMARKS

The present amendment and arguments address the requirements presented by the Examiner. In view of the following remarks, reconsideration of the restriction and election Requirement is respectfully requested. Applicants would like to thank the Examiner for the careful consideration given to this case. Claims 1-45 are pending in this application.

The Examiner alleges that the claims of the current application represent eight patentably-distinct inventions – Group I (Claims 1-20; 40-43); Group II (Claims 21-26); Group III (Claims 27 and 28); Group IV (Claims 29-32); Group V (Claims 33-35); Group VI (Claims 36 and 37); Group VII (Claims 38 and 39); Group VIII (Claims 44 and 45). To facilitate prosecution of the present application, Applicants have provisionally elected Group I.

The Examiner further states if Group I is selected, Applicants must elect a single sequence and one mutation variation to which the claims will be restricted. To facilitate prosecution of the present application, Applicants have provisionally elected SEQ ID NO: 3 (sequence) and the mutation of T at nucleotide base number 4121 of SEQID NO: 3 for further consideration. However, the Applicants traverse this restriction requirement for the reasons stated below.

The present invention does not recite such a multiplicity of species so as to be burdensome to the Examiner. The present application recites and claims only six sequences (SEQID NOs: 3-8). The guidance of MPEP § 806.04 is illuminating in the present case. In relevant part, it states “to further aid the biotechnological industry in protecting its intellectual property without creating an undue burden on the Office, the Commissioner has decided *sua sponte* to partially waive the requirements of 37 CFR 1.141 *et seq.* and permit a reasonable number of such nucleotide sequences to be claimed in a single application.” The section further states “it has been determined that normally ten sequences constitute a reasonable number for

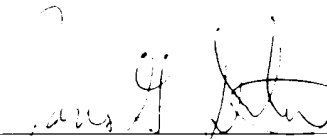
examination purposes.” Indeed, the cited passage provides the Examiner with ample justification to reconsider and withdraw the restriction requirement among species in the present case.

In view of the foregoing remarks, it is believed that the present application is in condition for final allowance and notice to such effect is respectfully requested.

If the Examiner believes that additional issues need to be resolved before this application can be passed to issue, the undersigned invites the Examiner to contact him at the telephone number provided below.

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By



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